

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
JOHN DALE TROTTER)	CASE NO. 05-62857 JPK
LOIS ANITA TROTTER,)	Chapter 13
)	
Debtors.)	

ORDER FOR HEARING

On March 5, 2008, the co-debtor, Lois Trotter, by counsel, filed a “Motion to Sever” which requests “leave of the Court to sever herself from the above case in order to proceed with her own Chapter 13 Bankruptcy which she intends to amend”. While it may be true (and it may not be true) that the filing of a joint petition creates one bankruptcy case which somehow effects the consolidation – administratively and/or substantively – of two separate bankruptcy estates into one estate and one case, the Court is unaware of any specific provision of the Bankruptcy Code which definitively explains or directs this transformation. Moreover, in a case such as this in which a Chapter 13 plan has been confirmed based upon the apparent fiction of a joint estate with joint creditors somehow substantively consolidated into one case with respect to both debtors, the effect of a “severance” on the confirmed plan is far from clear. Finally, there is no express provision in the Bankruptcy Code or in the Federal Rules of Bankruptcy Procedure which provides for “severance” of a joint case. The Court has on occasion previously granted a motion of the nature of that filed in this case, and then subsequently held a hearing to determine the ramifications of the granting of the motion upon the remaining case and upon the new case created by granting of the severance motion. However, now in circumspect, the Court believes that this procedure may well put the proverbial cart before the horse, and that a better course is to conduct a hearing on the severance motion itself prior to determining whether or not it should be granted and the effects which must be controlled for if it is granted. Among those effects are the following:

1. The extent to which property of the estate of the prior joint case becomes property of the estate of each of the several cases created by severance, including consideration of the “single estate”

concept which holds that the same property cannot be subject to two separately pending bankruptcy cases;

2. If a plan has been confirmed in the joint case and property of the bankruptcy estate is re-vested in the debtors, the effect of that circumstance upon administration of each of the joint cases, in view of the probable result that there is now no property of the estate to be administered in either case;

3. The effect to be given a plan confirmed in the joint case in each of the severed cases;

4. If creditors have existed in the joint case to whom the debtors were jointly liable, the effect to be given in each of the severed cases to an exemption election taken under applicable law with respect to tenancy by the entireties property;

5. The identity of the creditors who may be discharged in each of the severed cases if only one of those cases is completed to the point of granting of a discharge in that case.

IT IS ORDERED that a hearing will be held on **April 28, 2008, at 2:00 P.M.** to address the foregoing issues, and such others as may come before the Court, with respect to the foregoing Motion to Sever.

Dated at Hammond, Indiana on April 9, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtors, Attorney for Debtors
Trustee, US Trustee